

No. 75-1520

Supreme Court, U. S.

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In the Supreme Court of the United States

OCTOBER TERM, 1975

MARVIN MORRIS WANGRUD, PETITIONER

v.

UNITED STATES OF AMERICA

***ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT***

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner argues that the trial court erred in instructing the jury with respect to the element of willfulness in his prosecution for failure to file income tax returns and that he was not required to file tax returns because he received no dollars that were redeemable in gold or silver.

After a jury trial in the United States District Court for the Central District of California, petitioner was convicted of willfully failing to file income tax returns for the years 1971 and 1972, in violation of 26 U.S.C. 7203. He was sentenced to consecutive one-year prison terms on each count, the first 30 days of each count to be served in jail with the remainder of each term suspended, and to three years' probation (C.T. 18).¹ The court of appeals affirmed (Pet. App. A-1 to A-2).

¹"C.T." refers to the Clerk's transcript of the record. "Tr." refers to the trial transcript.

The proof showed that petitioner received a gross income of at least \$25,000 in both 1971 and 1972 (Tr. 18-19). Although he had filed tax returns for the years prior to 1971 (Tr. 48), for the years 1971 and 1972 petitioner sent to the Internal Revenue Service income tax return forms containing only his name and other identification but no information relating to his income or deductions. The forms contained statements protesting the income tax (Tr. 49, 60).

The documents filed by petitioner were not returns within the meaning of the Internal Revenue Code or the Treasury Regulations. See, e.g., *United States v. Daly*, 481 F.2d 28, 29 (C.A. 8), certiorari denied, 414 U.S. 1064; *United States v. Porth*, 426 F.2d 519, 523 (C.A. 10), certiorari denied, 400 U.S. 824. Petitioner told investigating Treasury agents that he filed this kind of "return" in order to protest the requirement of filing tax returns, a requirement that he considered to be unconstitutional, and because he felt that his taxes were being used for the destruction of the nation by tyrants (Tr. 64, 135). The essence of petitioner's defense was that the federal reserve notes he received as income during 1971 and 1972 were not lawful money because they were not redeemable in gold or silver (Pet. 16, 23), and therefore that they did not constitute "income" within the meaning of the tax law (Pet. 13-14).

1. Petitioner argues (Pet. 11-17) that the trial court erred in instructing the jury as to the element of willfulness. The instructions were as follows (Tr. 169-171):

A failure to act is willfully done if it is done voluntarily and intentionally and with the specific intent to fail to do something that the law requires to be done—that is, with bad purpose either to disobey or disregard the law. Here the only bad purpose necessary

for the government to prove is the deliberate intention not to file a tax return at the required time which the defendant knew that he was required to do.

* * * * *

You will also, it seems to me, take into consideration that by his own testimony the defendant expressed his awareness that he knew of nobody else who received payment for services in any other way than by checks or by legal tendered [*sic*] bills of the nature that he produced on the stand but which he said were not dollars within the meaning of this statute. Thus, by his own testimony the defendant must have realized that if Congress did not mean for him to file a tax return, by the same token Congress did not mean for anybody else to file a tax return, and you will have to consider whether the defendant believed that Congress intended that nobody who received income of the nature that he received that everyone else of whom he was aware was not intended to file an income tax return.

The question is, as I said before: In failing to file an income tax return showing his income at the required time, did the defendant know that it was the intention of Congress that he should under those circumstances file a return? *If you believe that he in good faith was of the opinion that Congress did not intend that he who received income of the nature that he did was obliged to file a return, then the government hasn't proved its case; but, if you find beyond a reasonable doubt that under all the circumstances this defendant knew, when Congress created that statute, it intended to and did say that a person who received income of the nature that Mr. Wangrud got was obliged to file an income tax return, then the government has proved its burden. [Emphasis added.]*

Petitioner's assertion to the contrary notwithstanding (Pet. 11-17), the trial court instructed the jury that a finding of a good faith misunderstanding of the requirements of the law must result in an acquittal.

The instruction was correct and was in complete harmony with *United States v. Bishop*, 412 U.S. 346, 360, where the Court held that "willful" connotes "a voluntary, intentional violation of a known legal duty."

2. The courts below correctly rejected petitioner's claim (Pet. 17-23) that taxable income encompasses only dollars that can be converted into gold or silver. See *United States v. Daly*, *supra*, 481 F.2d at 30. The court of appeals correctly stated (Pet. App. A-2):

By statute it is established that federal reserve notes, on an equal basis with other coins and currencies of the United States, shall be legal tender for all debts, public and private, including taxes. 31 U.S.C.A. § 392 (Supp. 1976). This statute is well within the constitutional authority of Congress. U.S. Const. Art. I, § 8. It so completely disposes of appellant's argument that it is unnecessary for us to invoke other provisions of the Internal Revenue Code which would be equally dispositive, defining as income compensation received in forms other than money. See Internal Revenue Code of 1954, § 61.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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